

REMARKS

Claims 3-11 were previously pending. Applicants have added new Claims 33-70. Therefore, Claims 3-11 and 33-70 are currently pending in the application.

The Final Office Action and Advisory Action (referred to herein collectively as the "Final Office Action"):

Reject Claims 8-11 under 35 U.S.C. § 101 and 35 U.S.C. § 112.

Reject Claims 3-11 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 20010054008 A1 to Miller in view of U.S. Patent Publication No. 20030055723 A1 to English.

Discussion of Rejection of Claims 8-11 under 35 U.S.C. § 101 and 35 U.S.C. § 112

While Applicants respectfully maintain that Claims 8-11 as previously pending are patentable subject matter under 35 U.S.C. § 101 and fully comply with 35 U.S.C. § 112, in order to expedite allowance of the present application Claims 8-11 have been amended to recite a "computer readable medium storing" as similarly suggested by the Examiner. Applicants therefore respectfully request that the rejections under 35 U.S.C. § 101 and 35 U.S.C. § 112 be withdrawn.

Discussion of Rejection of Claims 3-11 under 35 U.S.C. § 103(a)

As set forth below, Applicants have traversed the rejections of the pending claims under Section 103(a). The cited art relied on in the Final Office Action does not disclose or suggest all of the limitations of the pending claims, as amended. Nor does the Final Office Action explain why the differences between the pending claims and the cited art would have been obvious to one of ordinary skill in the art. "With regard to rejections under 35 U.S.C. § 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a prima facie case of obviousness) is more probable than not." MPEP §2142. Accordingly, "the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." MPEP §2142; see *KSR International Co. v. Teleflex, Inc.*, 550 U.S. ___, (2007)).

Independent Claim 3

The Final Office Action rejects Claim 3 under 35 U.S.C. § 103(a) as being obvious over Miller in view of English. For the reasons set forth below, Applicants respectfully submit that the obviousness rejections have been traversed.

Neither Miller nor English disclose first identifying sellers based on a first set of criteria, and then performing a down selection of the identified sellers by selecting as a featured seller an identified seller offering the item at the lowest price. Thus, for example, Miller and English, alone or in combination, fail to teach or suggest: “among a plurality of sellers, identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold; selecting as the featured seller of the item the identified seller that is offering the item at the lowest price.”

The Examiner asserts that Miller discloses the elements of “selecting as the featured seller of the item the identified seller that is offering the selected item at the lowest price”, arguing that paragraphs [0172] and [0178] disclose that the selection of the vendor can be based on price. Paragraph [0172] recites “criteria for selecting the vendor include one or more of: price of the product(s), proximity to the vendor, availability of delivery, whether the products are in stock, wrapping availability, shipping availability, tracking availability, and a loyalty program.” Paragraph [0178] recites “the criteria for selecting the vendor includes at least one of price, proximity to the vendor, availability of delivery, whether the products are in stock, wrapping availability, shipping availability, tracking availability, and a loyalty program.” The Examiner further argues that it would have been obvious to one of ordinary skill in the art to apply the criteria of Miller and include the score of English to identify sellers.

Applicants initially note that neither Miller nor English even mention identifying a seller offering the lowest price for an item, much less as a featured seller.

Further, even assuming that the score of English were included in the criteria of Miller, and even further assuming that Miller disclosed identifying a seller offering the lowest price for an item (which assumptions Applicants specifically deny), the result would still not provide the claimed invention. For example, the combination of Miller and English would still fail to

disclose performing a first identification of sellers of an item using a set of criteria, and *then* selecting a featured seller from those identified sellers using lowest price for the item.

Thus, for example, a different seller would likely be identified as a featured seller if sellers offering the lowest price were first identified, and then from those identified sellers a featured seller was identified based on availability levels and seller scores as compared to the seller that would be identified if sellers were first selected based on availability levels and seller scores, and from the identified sellers a featured seller was selected based on lowest item price. The Examiner has failed to appreciate or address the forgoing, and therefore has failed to provide a clear articulation of the reasons why the claimed invention would have been obvious. The Examiner has therefore failed to make a prima facie case of obviousness. with respect to Claim 3.

Further, according to Miller, while sellers offering an item may be identified to a user, the user then apparently has to activate a link (a "Buy It Now" link) for a given seller and navigate through that seller's particular purchase process ("Links 508 to more information are also provided in the information frame. In this example, links to the manufacturer, a features page, etc. are provided. Several vendors of the product are provided in the section 510 entitled "Buy It Now!" The section 512 entitled "Buy It In Your Neighborhood" lists vendors of the product based on geographic location. Preferably, maps and/or directions to the vendors are made available to the user," Miller, paragraph [0151]). Thus, the combination of Miller and English further fails to teach or suggest "replying to the request for information with a web page containing ... a control that, when activated, adds the item to a shopping cart so that the order will be placed from the featured seller when check out is performed" as recited by amended Claim 3.

Dependent Claims 4-6

Claims 4-6 depend from Claim 3 and thus, are allowable for at least the same reasons as set forth above in connection with Claim 3. In addition, with respect to Claim 4, the Examiner asserts that because the relied upon references disclose having featured vendors being selected from those that have paid a fee, the "identifying and selecting" occurs before a request is received. However, the act of identifying and selecting referred to in Claim 4 is not performed by merely selecting sellers that have paid a fee. Instead, Claim 4, which depends from independent Claim 3, performs the act of identifying and selecting so as to select item sellers

having availability levels and seller scores that satisfy corresponding thresholds, and identifying which of those sellers offers the lowest price. Thus, the combination of Miller and English fails to teach or suggest that the identifying and selecting of Claim 3 is performed before the receiving of Claim 3.

With respect to Claim 5, neither Miller nor English teach or suggest performing the acts of identifying or selecting at a uniform interval. Further, as admitted by the Examiner, Miller merely discloses that a featured seller is determining by the paying seller and the most hits. By contrast, Claim 5, which depends from independent Claim 3, determines "a most recently selected featured seller" wherein the featured seller was selecting from item sellers having availability levels and seller scores that satisfy corresponding thresholds, and identifying which of those sellers offers the lowest price. Thus, the combination of Miller and English fail to teach or suggest "determining a most recently selected featured seller, and wherein the most recently selected featured seller is used to reply to each of a plurality of received requests," as claimed.

Independent Claim 7

With respect to independent Claim 7, as similarly discussed above with respect to Claim 3, the combination of Miller and English fails to teach or suggest the elements of:

"an identification subsystem that identifies, among a plurality of sellers, those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold; a selection subsystem that selects as the featured seller of the item the identified seller that is offering the item at the lowest price."

Further, as similarly discussed above with respect to Claim 3, the combination of Miller and English fails to teach or suggest the elements of "a reply subsystem that replies to the request for information with a web page containing ... a control that when activated, adds the item to a shopping cart and indicates that an order for the item is to be placed with the featured seller."

Claims 8-11

In rejecting independent Claims 8, and Claims 9-11 which depend from Claim 8, the Examiner relies on the analysis provided in rejecting Claims 3-6.

Independent Claim 8

With respect to independent Claim 8, and as similarly discussed above with respect to Claim 3, the combination of Miller and English fails to teach or suggest the elements of "content specifying the display of a shopping cart control that may be activated to add the selected item to a shopping cart to enable the ordering of the selected item from a distinguished one of a plurality of sellers". Instead, while sellers offering an item may be identified to a user in Miller, the user then apparently has to activate a link (a "Buy It Now" link) for a given seller and then navigate through that seller's particular purchase process.

Further, the combination of Miller and English fails to teach or suggest the elements of "the distinguished seller being selected by offering the selected item for sale at the lowest price among those sellers of the plurality (1) that are offering the item for sale, (2) whose availability level for the selected item exceed a predetermined availability threshold, and (3) having a seller score that exceeds a predetermined score threshold". As similarly discussed above with respect to Claim 3, even if Miller were modified by the disclosure of English as proposed by the Examiner, the resulting method would still not provide the elements of Claim 3. For example, the combination of Miller and English would still fail to disclose performing a first identification of sellers using a set of criteria, and *then* selecting a featured seller from those identified sellers using lowest price.

Dependent Claims 9-11

Claims 9-11 depend from Claim 8 and thus, are allowable for at least the same reasons as set forth above in connection with Claim 8. Further, in rejecting dependent Claim 9, the Examiner relies on the analysis provided in rejecting Claims 3-6. However, Claim 9 recites several elements that are not recited in any of Claims 3-6. In particular, Claim 9 recites "wherein the data structure further comprises contents specifying the display of the control that may be activated to display ordering controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller". Because the Examiner has failed to address the elements of Claim 9 and failed to provide a clear articulation of the reasons why the claimed invention would have been obvious, and because the combination of Miller and English fail to teach or suggest the recited elements, the Examiner has again failed to make a prima facie case of obviousness.

Similarly, in rejecting Claim 10, the Examiner relies on the analysis provided in rejecting Claims 3-6. However, Claim 10 recites several elements that are not recited in any of Claims 3-6. In particular, Claim 10 recites "wherein the data structure further contains contents specifying the display of one or more secondary controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller, wherein the control for the distinguished seller is displayed more prominently than the secondary controls". Because the Examiner has failed to address the elements of Claim 10 and failed to provide a clear articulation of the reasons why the claimed invention would have been obvious, and because the combination of Miller and English fail to teach or suggest the recited elements, the Examiner has again failed to make a prima facie case of obviousness.

New Claims 33-70

Applicants have added new Claims 33-70. These claims are fully supported by the originally-filed disclosure. Applicants respectfully submit that new Claims 33-70 recite a combination of features that is distinguishable over the art of record, and thus are in condition for allowance.

Summary

In view of the foregoing amendments and remarks, Applicants respectfully submit that Claims 3-11 and 33-70 are patentably distinct over the cited art and are in condition for allowance. Applicants therefore respectfully request the allowance of Claims 3-11 and 33-70.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history

Application No.: 10/750,163
Filing Date: December 31, 2003

shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Co-Pending Applications of Assignee

Applicant wishes to draw the Examiner's attention to the following co-pending applications of the present application's assignee.

Serial Number	Title	Filed
11/747,957	PROFILING ITEM SELLERS TO INFORM ITEM PURCHASING DECISIONS AND BUILD TRUST IN A MULTIPLE-SELLER MARKETPLACE	May 14, 2007

Request For Telephone Interview

Pursuant to M.P.E.P. § 713.01, in order to expedite prosecution of this application, Applicant's undersigned attorney of record hereby formally requests a telephone interview with the Examiner as soon as the Examiner has considered the effect of the amendments and remarks presented above. Applicant's attorney can be reached at (310) 551-3450 or at the number listed below.

Conclusion

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 1, 2008

By: 

David N. Weiss
Registration No. 41,371
Attorney of Record
Customer No. 20995
(310) 551-3450